

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**THOMAS W. CUNNINGHAM,**

**Plaintiff,**

**v.**

**No. CV 12-1052 MV/LAM**

**THE CITY OF ALBUQUERQUE, et al.,**

**Defendants.**

**ORDER GRANTING MOTION TO STRIKE PLAINTIFF'S AMENDED COMPLAINT**

**THIS MATTER** is before the Court on Defendants' *Motion to Strike Plaintiff's Amended Complaint [Doc. 16]* (*Doc. 19*), filed February 19, 2013. Defendants ask the Court to strike Plaintiff's amended complaint [*Doc. 16*], which was filed February 11, 2013, because it was filed without leave of Court or Defendants' written consent, in violation of Fed. R. Civ. P. 15. [*Doc. 19* at 2]. The Court finds that no response to the motion is required. Pursuant to Fed. R. Civ. P. 15(a)(1), a party may amend its pleading as a matter of course within 21 days after serving it. Otherwise, a party may amend its pleading only with the opposing party's written consent or with the court's leave. Fed. R. Civ. P. 15(a)(2). Here, Plaintiff's original complaint was filed in state court on August 3, 2012. [*Doc. 1-1*]. Therefore, Plaintiff must either obtain Defendants' written consent or leave of this Court before amending his complaint. For these reasons, the Court **FINDS** that Defendant's motion is well-taken and should be **GRANTED**.

**IT IS THEREFORE ORDERED** that Defendants' *Motion to Strike Plaintiff's Amended Complaint [Doc. 16]* (*Doc. 19*) is **GRANTED** and Plaintiff's amended complaint [*Doc. 16*] should be **STRICKEN** for failure to comply with Fed. R. Civ. P. 15. Plaintiff must comply with Fed. R. Civ. P. 15 in order to amend his complaint.

**IT IS SO ORDERED.**

*Lourdes A. Martínez*  
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**THE HONORABLE LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**